

## **Chapter 2: Procedural Safeguards/Parental Rights**

Procedural Safeguards/Parental Rights represent one of the most important protections for eligible children and their families within the early intervention system. Federal regulations recognize that families need to be involved personally every step of the way. In the desire to determine eligibility and provide services as soon as possible, early intervention providers may unknowingly and unintentionally cause families to agree when they (the family) are unsure about what is occurring and feel uninformed or unclear about the recommendations and course of action. Allowing time between actions provides the family the opportunity to reflect and prepare for the next step.

Providing families with the Procedural Safeguards/Parental Rights helps ensure that families are involved in the decision-making process regarding services for their child. Rather than being a stand-alone activity, procedural safeguards are best offered to families within the process of participation. For example:

1. Discuss the early intervention system with families at the initial intake visit;
2. Explain the difference between evaluation and assessment; involve families in scheduling and planning of the evaluation for eligibility determination, and obtain the family's consent for any additional assessment activities that may be needed;
3. While developing the Early Intervention (EI) Record with families, continue to discuss their rights to review their child's record from time to time, and explain how to request changes, etc. in that record;
4. Obtain family participation and written consent to implement the services and activities set forth in the IFSP; and

5. Actively involve families in the monitoring, review and evaluation of the IFSP and provide them with a prior written notice when changes are made (even though these things have been previously discussed with them).

Families need to understand their rights, opportunities and responsibilities through the procedural safeguards and be able to apply them accordingly. The best way to help families understand their rights is to explain them as they apply to a given situation, in addition to providing an initial broad overview of all of the procedural safeguards.

### **Family Rights, Opportunities and Responsibilities**

The State of Missouri is responsible for ensuring effective implementation of the Procedural Safeguards/Parental Rights by each early intervention service provider that is involved in the provision of early intervention services. These procedural safeguards/parental rights are a critical component of the early intervention system and protect the rights of eligible children and their families participating in early intervention services pursuant to state and federal regulations. The lead agency has the responsibility to ensure that:

- Families are adequately informed of their rights; and
- Procedural safeguards are implemented throughout the early intervention process

Family rights, opportunities and responsibilities provide the vehicles that ensure:

1. families understand what is happening to and for them
2. there are ways to identify a problem
3. there are alternatives to resolve problems

The terms procedural safeguards and parental rights mean the same thing.

The System Points of Entry (SPOEs) and all service providers and Service Coordinators must comply with the requirements set forth in the procedural safeguards/parental rights in all of their dealings with children and families.

## **Provision of a copy of the Parental Rights Statement**

Procedural safeguards (protecting the rights of eligible children and their families) are guaranteed by law.

State and federal regulations require that a **copy** of the Parental Rights Statement **must** be provided each time the parent is given a prior written notice (see 34 CFR 303.403).

In addition to the Parental Rights brochure, Procedural Safeguards are thoroughly outlined in the Part C State Plan. This section of the Plan includes information about notice, consent, examining records, surrogate parent (educational surrogate), mediation, due process, and complaint procedures.

## **Surrogate Parent (Educational Surrogate)**

Each SPOE must comply with the DESE procedures for determining whether a child needs an Educational Surrogate. This information must be widely distributed and known to all service providers including service coordinators. Any person may advise a responsible public agency that an infant or toddler with a disability within its jurisdiction may be in need of a person to act as an Educational Surrogate. This information is given to the SPOE in their county or directly to the DESE.

When the SPOE becomes aware of a child with a disability living within its jurisdiction who needs an educational surrogate, it shall, within thirty (30) days, determine whether an educational surrogate should be appointed. A request for the appointment of a surrogate shall be made within ten (10) days to the Division of Special Education of DESE. The Division, on behalf of the State Board of Education, shall, within thirty (30) days, appoint a person to act as an educational surrogate. The Division maintains

First Steps has developed a brochure that describes the family's parental rights and how to access them. This brochure must be provided to the family each time there is a prior written notice given.

Educational Surrogate

a registry of trained educational surrogates from which they select individuals for appointment. If an educational surrogate dies, resigns, or is removed, a replacement will be appointed within fifteen (15) days thereof.

The Service Coordinator should work with the SPOE when the need for an Educational Surrogate is identified.

### **System Point of Entry Responsibilities**

Specifically, each SPOE shall:

- a) designate a staff member who will be responsible for overseeing the educational surrogate program in their agency. Unless notified otherwise, DESE will assume that the educational surrogate contact person is the same as the SPOE contact person;
- b) complete and return to DESE a “Determination of Need for Surrogate Appointment” form for each child believed to be eligible for receiving a surrogate appointment;
- c) assist DESE in recruiting educational surrogate volunteers and submit their names and addresses to DESE;
- d) be available to assist DESE with local educational surrogate training; and,
- e) complete and return to DESE an “Educational Surrogate Evaluation” form for each surrogate serving in the SPOE catchment area.

Additional information about the appointment of educational surrogates is contained in the Part C State Plan.

### **Children under the care and custody of the State of Missouri**

The Educational Surrogate and Division of Family Services (DFS) caseworker must coordinate and work together for the overall benefit of the child. It is imperative that two-way communication occur between the Educational Surrogate and the

Missouri has developed a Family Handbook which helps to organize and maintain records and information. Families should receive a copy of all documents relating to their child and the IFSP. The family’s Handbook should reflect the EI record maintained at the SPOE.

caseworker regarding activities and events, and that both parties are kept fully informed of all relevant activities and commitments made on behalf of the eligible child.

The activities and obligations of the Educational Surrogate are restricted to the planning and delivery of early intervention services under First Steps for the eligible child only. If a child is under the care or supervision of the State, the Educational Surrogate may not be confused with the assigned DFS caseworker responsible under the laws of the State for the obligations of the department as custodial parent. In these instances, the DFS caseworker cannot serve as the child's Educational Surrogate for the purposes of First Steps.

In Missouri, the child's foster parent acts as a parent. Foster parents may access family training through First Steps in order to understand and fulfill their roles and responsibilities appropriately.

Interpreter services should be obtained if the family's native language is not English, or if there is another mode of communication (e.g. ASL)

### **Opportunity to examine records (§303.402)**

Parents must be permitted to inspect and review any early intervention records relating to their child. This opportunity must be provided no more than 45 days after the request has been made; and, prior to any IFSP meeting regarding early intervention services or hearing related to the identification, evaluation, placement or provision of early intervention services. The parents have a right to have a representative designated in writing, inspect and review the records. The right to inspect and review records includes:

- a) The right to a response from the SPOE to reasonable requests for explanations and interpretations of the records;

- b) The right to request that the SPOE provide copies of the records containing the information, if failure to provide those copies would effectively prevent the parent/legal guardian from exercising the right to inspect and review the records; and
- c) The right to have a representative of the parent/legal guardian inspect and review the records.

### **Early Intervention Record Access**

The SPOE may presume that the parent has authority to inspect and review records relating to his or her child unless the SPOE has been advised that the parent/legal guardian does not have the authority under State law. In instances of non-custodial parents, the SPOE assumes that the non-custodial parent has access rights to the child's EI Record and is a participant in the IFSP development unless advised otherwise in writing by court order.

The Intake/Service Coordinator will ensure that access to the EI Record, if requested, is the right of each parent/legal guardian and will not be denied by the public agency due to physical limitations or geographic locations.

If any EI Record or documentation includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of the specific information. The identifying information on other children/individuals must be blocked out prior to inspection.

### **Access to records**

The SPOE is required to maintain a list of those employees who have access to Early intervention records and maintain the list in a central location. This listing should include the SPOE personnel

including the supervisor, relevant support staff, Intake Coordinators and state employees (for the purpose of monitoring, program or fiscal audits or complaint investigation).

An access log will be maintained in each child's file indicating, by signature, date, and purpose, any and all specific access to the EI Record made by all persons who do not have general access to the file.

Access Log

The SPOE must provide parents, upon request, a list of the types and locations of early intervention records collected, maintained, or used by the First Steps system.

#### **Amendment of record at parent's request**

If a family believes that the information contained in their child's EI Record is inaccurate, misleading or discriminatory in some manner, they may request in writing that this information be either removed or rewritten to more accurately reflect their child.

Missouri State Plan,  
Section IX Procedural  
Safeguards, pgs. 38-39

#### **Fees**

Each SPOE may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A SPOE may not charge a fee to search for or to retrieve information.

#### **Confidentiality of personally identifiable information**

Each SPOE shall protect the confidentiality of personally identifiable information. The SPOE shall:

- 1) appoint one person to be responsible for ensuring the confidentiality of any personally identifiable information;

Missouri State Plan,  
Section IX, Procedural  
Safeguards, pg. 39

- 2) provide to all employees training or information about the state's policies and procedures that govern such information;
- 3) maintain a current list of the names and positions of those employees within the SPOE who have access to personally identifiable data.

The official EI Record is maintained at the local System Point of Entry. In order to adequately ensure that these records are protected, and the appropriate provisions put in place, the SPOE has the responsibility to monitor those having access to this information. Individuals with current, signed releases recorded in a child's EI record may access the information detailed on the release form, including obtaining a copy of the information. The staff at the SPOE should verify that a current release exists and the extent to which information may be shared prior to opening the full EI record to the individual named on the Release of Information Form. Individuals who are part of the First Steps system, such as DESE employees who are conducting monitoring or providers selected by the family to provide EI services, may access the EI record without parental consent. All individuals who access the file, with the exception of designated SPOE staff, must sign and document the Access log.

The protection of confidentiality extends even to members of the child's family who are not their legal guardian. In the event that the SPOE staff or Service Coordinator need to communicate directly with family members other than the child's legal guardian(s), a signed release must be obtained from the legal guardian. This requirement also applies to those instances when a child is in foster care, or is a ward of the State; where necessary, the Educational Surrogate parent would sign the reciprocal release.



## **BEST PRACTICE ACTIVITIES RELATED TO PROVIDING PROCEDURAL SAFEGUARDS INFORMATION TO FAMILIES THROUGHOUT THE FIRST STEPS PROCESS**

While regulations require that a copy of the Parental Rights statement be provided to parents at certain times in the process, a simple listing of their rights does not always convey the meaning of these protections. Each of the procedural safeguards has implications for a family's experience with the early intervention system. For this reason, it is recommended that both an oral and written explanation of the procedural safeguards should be provided at multiple points in the family's involvement with the Part C system. Repetition is necessary because the information is complex, and families need to hear and discuss their rights several times in order to fully understand them. The times when it is recommended that both an oral and written explanation be provided are:

1. When the family has its initial contact with the early intervention system
2. When the initial evaluation and assessment is proposed or refused (\*)
3. When the eligibility determination is made
4. When the IFSP is being developed or reviewed
5. When a change in outcomes, services or placement (location) is proposed or refused (\*)

\*A written prior notice accompanied by a copy of the Parental Rights Statement must be provided at these times. A verbal explanation should accompany the written statement. This should be provided in the natural flow of conversation and in the context of emphasizing parental rights, including the right to disagree and to make their own decisions based upon accurate and factual information.

At appropriate times during the process parents should be informed, both verbally and in writing, of the following rights:

- The right to a timely, multidisciplinary assessment
- The right, if eligible, to appropriate early intervention services for the child and family
- The right to refuse evaluations, assessments and services
- The right to notice before a change is made or refused in the identification, evaluation, placement or location of the child and family services, or in the provision of early intervention services to the child or family
- The right to confidentiality of personally-identifiable information
- The right to review and request the correction of early intervention records
- The right to utilize an advocate or attorney in any and all dealings with the early intervention system
- The right to utilize administrative and judicial processes to resolve complaints